

MAKING YOUR LEGAL SERVICES PROGRAM ACCESSIBLE TO CLIENTS WITH LIMITED ENGLISH PROFICIENCY –

AN APPROACH

I. INTRODUCTION

Dramatic demographic changes have brought increasing numbers of limited English speaking clients to communities served by many legal assistance programs. Not only is the number of immigrants at a historic high; people are also coming from a greater variety of linguistic backgrounds. In many cases, immigrants are moving to localities unaccustomed to substantial foreign-born populations. It is incumbent upon legal services programs to change old ways of operating to prevent the effective denial of services to clients due to the program's failure to overcome language barriers.

Programs that do not assume responsibility for removing language barriers may be delivering services in an unfair manner or in a way that does not comply with professional standards. For programs that receive federal funds, failure to ensure linguistic accessibility may constitute a violation of Title VI of the Civil Rights Act of 1964, which prohibits practices that have the effect of discriminating against people with limited English skills.

This document is intended to outline a basic approach to making a legal services program language accessible, and is aimed at programs that are at the beginning stages of upgrading language policies and practices.

The **goal** is to upgrade program practices in order to implement an effective language policy promptly. The basic **policy** is that it is the responsibility of the program to deliver quality legal services equally to clients of all language backgrounds.

There are four distinct but overlapping aspects of improving language access:

- ▶ Assess client needs and program resources
- ▶ Create policy
- ▶ Train staff
- ▶ Monitor

II. ASSESS NEEDS

A. CLIENT LANGUAGE NEEDS

Data should be gathered on existing program caseload to tabulate the proportion of clients who are limited English proficient (LEP), the primary languages spoken by clients, and the extent to which language services are being used. Programs which lack data gathering ability on these points can gather information informally by surveying staff, especially intake staff. Fiscal personnel ought to be able to tabulate expenditures for contracted language services. In addition, some effort should be made to tabulate the number of clients who actually receive legal representation by staff, as compared to those who receive limited services such as brief advice or a referral. These numbers should provide some sense of the language makeup of clients who are actually receiving a full array of services.

Information also should be gathered on the eligible client population, i.e., the total income eligible population in the geographic area served by your program. Statistical information from the 2000 census is becoming available and can be reached on-line at www.census.gov. Look for counts of individuals or households who don't speak English "very well," tabulations by primary language, or of foreign-born individuals. Census data by income level and language should be available during 2002. In the meantime, do what you can to approximate relative numbers and trends. Community organizations and other agencies may have data available as well. The point is to be able to identify the specific languages in use in your service area among the low-income population, with some feel for the relative numbers involved. You should also determine how the language groups are distributed geographically.

Once you have these two batches of data, some comparisons should be attempted between the eligible client population and the actual client population with an eye to spotting under-served groups. Is there a rough correlation between the percentage of total income eligible population that is LEP and the percentage of actual clients that are LEP? Do some language groups seem to be receiving services at a higher rate than others? Assuming that disparities are observed, some thought needs to be given as to whether the manner and methods of delivering client services, or the types of services provided, are making the program less accessible to LEP clients in general, or to specific language groups. Aside from the obvious - that your staff may not be able to communicate with many limited English speaking clients - there are numerous other service issues which deserve critical consideration, including:

- ◆ *location* of offices relative to client populations as well as availability of public transportation. Are your offices more convenient for some groups than others? Are offices located in an area unfamiliar to or uncomfortable for some groups?
- ◆ impact of requiring *telephone* communication to access services. Can

clients access help without a phone? LEP clients may prefer in person contact over telephone contact on the assumption that interpretation can be more easily provided in person.

- ◆ *areas of law* in which services are provided. Do you know the particular legal needs of different language groups served? Do you handle immigration cases? Are you advocating for language access/rights at other agencies with whom LEP clients interact?
- ◆ *type of assistance* offered. What practices are followed to decide whether to offer a client full representation, limited service, referral or advice only? Some restricted levels of service may be of little value to a client unable to send a letter, read a response, or file an application in English.
- ◆ *office hours*. Can working people without paid leave time see you without losing pay?

When this initial assessment is completed, you should have a sense as to what languages you need to focus on, and the extent to which services barriers may be blocking access to your program.

B. PROGRAM RESOURCES

It is also necessary at the outset to assess the existing resources available to serve LEP clients, the policies and practices in use, and the existence of language barriers to the program. Which staff are proficient in a second language? Are there arrangements in place to obtain trained interpreters and translators for other languages likely to be encountered?

Has the program formulated any policies regarding: identifying and tracking a client's primary language, providing language services, use of staff for language services, and encouraging/permitting clients to provide their own interpreters? Whether or not policies exist, what practices are actually being followed by staff?

The program's performance in the delivery of services to LEP clients must be evaluated. Review all stages and aspects of client services to identify all barriers that exist. Consideration should be given to intake, referral, advice, representation, advocacy and outreach.

III. SET POLICY

Once a program has assessed the needs of the client population, the existing resources available to the program, and the state of program practices, policies need to be established to promote equal access to LEP clients. The program should craft a ***comprehensive written policy***, distribute it to all staff, and make it available to the public.

A. POLICY COMPONENTS

The program policy starts with a general rule. For example: the program delivers quality legal services to clients in their preferred language. It is the responsibility of the program, not the client, to eliminate language barriers by providing free, competent language assistance to clients at all stages of the process. The program shall not provide services to LEP clients which are limited, unreasonably delayed or otherwise inferior to those provided to other clients.

It is important to provide *notice* of the policy. The policy should be posted in the office and stated in program flyers. Multilingual posters informing clients of the availability of free interpreting services should be displayed in waiting rooms. Intake and reception staff should be provided with language identification cards (these allow staff to identify the language of a non-English speaking client by handing her a card which instructs the client, in numerous languages, to “point to your language” so an interpreter can be called). All clients must be informed of the policy at the points of initial contact. It must be made clear that bilingual staff or professional language services will be provided at no cost to the client. Intake forms must be formatted to allow for recording of *preferred language* of clients who need language services. Files must always be marked with language information.

A key policy component deals with various aspects of determining *who should provide interpreting services*. Many providers are deficient in this area. Interpreting, as a general rule, must be provided by professional, trained interpreters. It is, of course, necessary for the interpreter to be fluent in the second language as well as in English. Administrators should be aware that it is rare for a person to be fluent in two languages at the level needed for legal interpreting. In addition to fluency in both languages, the interpreter must also be trained in the various modes of interpretation (e.g. consecutive, simultaneous, summarization, sight translation) and their proper use. Interpreters must also be trained in the various roles assumed by interpreters (e.g. conduit, clarifier, cultural broker) and well as the ethical standards governing interpreters. Furthermore, the interpreter ought to have training and experience appropriate for functioning as a legal interpreter, so that she is familiar with the court system, stages of litigation, and legal jargon. Optimally, the interpreter should possess *certification* as a legal interpreter. However, many states have not yet developed certification standards and procedures, and those that do cover few languages. Even if certification as a legal interpreter is not available, there may be other certifications in your jurisdiction to use as a qualification.

The corollary to this rule is that *relatives and friends* of the client generally should not be permitted to function as interpreters. They will generally not have any training to act as an interpreter, and may not be proficient in both languages. The use of friends and family also tends to reflect past bad habits of making the client, rather than the program, responsible for overcoming language barriers. Programs must also be cautious because relatives may have conflicts of interest with the client that may not be readily apparent. The client's right to privacy is also undermined when relatives or friends are used for interpreting.

Everything that counsels against the use of friends and relatives of the client for interpreting is more pronounced with the client's minor *children*. Using minor children to

interpret is a notoriously poor practice and one that clearly signals a program's lack of commitment to linguistic accessibility. Young children are most likely to be deficient in their language skills, often in both languages. They often miss school to act as interpreters. They are least likely to understand the legal system, and most likely to feel qualified to answer for the client rather than simply be a neutral intermediary. And reliance on children may tend to undermine family structure as well as psychologically burden the child. Programs should strongly discourage, if not outright prohibit, the use of minor children as interpreters.

Some thought needs to be given to *determining when an interpreter is needed*. The easy case is when staff are essentially unable to communicate with a client due to a language barrier. On the other hand, the client who is able to answer questions sufficiently to fill out an intake form might need an interpreter as well, particularly for more in-depth communications. The decision must consider the needs and desires of both the client and the provider. When in doubt, use an interpreter.

Clients will often decline language services for the wrong reasons. This is why it is essential that intake staff and receptionists be trained to notify clients of the availability of *free language services* and that clients never be given the impression that it is their responsibility to communicate effectively with staff. Clients should not decline services thinking they will have to pay, or because of a fear of delay in obtaining help. They should also understand that interpreters are bound by rules of confidentiality. Some clients will refrain from requesting an interpreter so as not to impose a burden on the provider. Some may have pride in how much English they have learned, without realizing their deficiencies.

This not to say that there are no problems with professional interpreters. Some language communities are sufficiently small that a client might reasonably fear that a professional interpreter you call in will be someone who knows him from the community, or knows his family, which could cause great embarrassment. The client may have had bad experience with poorly trained interpreters. Or perhaps the client just prefers the comfort of a friend or relative to interpret so that she is also there to help handle a difficult situation.

Program policy needs to be cognizant of reasons for clients to avoid a professional interpreter and should take these concerns into account to promote client input over case handling. However, the client should not always have the final word as to whether an interpreter is provided. Case handlers must be assured that they are able to understand accurately what the client is saying, and that the client understands what the case handler is saying. Failure to use a professional interpreter may make communication unreliable to the extent that the provider cannot assist the client consistent with professional standards. For this reason, program staff need to be free to call in an interpreter when help is needed to allow the staff to understand the client, even if the client appears to understand the staff and states that no interpreter is needed.

It is also important that the policy deal with *caseload distribution* regarding LEP clients. Cases involving an interpreter typically require three times as much time for any tasks involving client communication. Even when the case handler is bilingual, it will take more time to handle the case because of the need for translation work and for interpreting whenever others are

involved in the case. Immigrant clients also are more likely to lack a basic understanding of the legal system and options open to them. Higher levels of service are often required as well because LEP clients are less able to be adequately served on an advice only or other limited service basis. For these reasons, case handlers must be given extra credit for assisting LEP clients through interpreters. Appropriate adjustment should be given for bilingual staff as well.

B. GATHERING LANGUAGE RESOURCES

The essential element for a language access program is the creation of a network of staff and services to provide interpretation and translation services for a wide range of LEP communities. Special attention must be given to provide a high level of services for those language groups most frequently encountered. The program must also have an adequate system in place for serving less frequently encountered language groups.

The first line of language services, especially for high volume languages, is built upon *in-house bilingual staff*. Those staff must be identified and their proficiency levels determined, in both English and the second language. Consideration should be given to formal assessment of language capability. A staff language directory that lists staff with second language skills and categorizes them according to skill in speaking and writing should be compiled and circulated.

A *protocol* should be established for use of staff for interpreting, which takes into account the existence of other job duties that are assigned to such staff, as well as their training and skill level. Don't forget that bilingual staff need training to function as interpreters. Since most programs will not be able to hire staff solely to provide language services, consideration must be given to adjusting the compensation and duties of staff so that they are not treated unfairly or overburdened by extra work. Primary staff should be designated for this function, considering skill, training and availability.

Since most programs will find they lack sufficient staff to cover the array of language supports needed to assist clients, the program must place a priority on *hiring new staff* with second language ability. Bilingual staff members are able to deliver services more efficiently by reducing the time needed for interpreting. Diversifying staff based on language skills can provide additional benefits by increasing the cultural awareness of the program and enhancing its ties to different client communities and organizations.

It is almost certainly necessary to identify, assess and retain *outside contractors* to provide professional, in-person interpreters for all languages not adequately covered by staff, including back-up for staff. As an alternative, the program may wish to establish formal arrangements with community based organizations, student groups and volunteers to provide language services. Because it is the agency's duty to provide language accessible services, care should be taken not to depend on unpaid support from community organizations, which have their own programs to operate. These organizations can be essential to outreach and referral efforts, but the staff should not be expected to function as an unpaid adjunct to the legal services program. Reliance on donated help from community groups may have the effect of discouraging

referrals, thereby undercutting outreach efforts. No matter who does the interpreting, quality must be assured. Such assurance can be difficult and awkward to obtain from volunteers.

A telephone based interpreter service is an essential component to providing language accessible legal assistance. Such services (the best known being Language Line Services which operates nationally) can provide coverage for a large number of languages. They are particularly needed in programs which depend upon telephone intake systems, or which encounter a wide range of languages. Good telephone services can get an interpreter on the phone in less than a minute. They are also especially useful for identifying the language of the client and for triage until an in-person interpreter can be obtained. Finally, telephone services are helpful for cost effective, day to day communication with clients. (Telephone services usually charge by the minute, whereas in person interpreters may charge by the hour with a minimum time charge plus travel. For short communications, telephone services are generally less expensive, while for long discussions, an in-person interpreter is usually cheaper.)

Translation of written documents raises some separate issues. Generally, the policy should be that LEP clients should have documents translated for them so that they can have the opportunity to read and understand forms, correspondence and filings in a manner similar to English speaking clients. But because translation of all documents, forms and correspondence is not only quite expensive but also in some particular situations of limited benefit, consideration must be given as to the circumstances in which it should not be required. *Sight translation*, in which a qualified interpreter who reads a document and tells the client what it says, may in some instances serve as a reasonable alternative to written translation.

Programs need to review the range of forms, community education materials and other documents that they use. Priority should be given to translating key forms, such as those that will be signed by the client, obtain consent, or explain rights. These can be stocked in advance for languages that are regularly encountered.

Translators must be selected with the same care as interpreters but also with the awareness that different skills are needed. For example, bilingual staff members of legal services programs may have the language skills needed to interpret competently yet lack the more formal educational background (in both English and the foreign language) one typically needs to translate competently. Because translation involves written communication without opportunity for clarification, competent translation requires a higher level of precision in both content and grammar. (Conversely, interpretation requires a higher level of conversational skill than translation).

It is a good idea to have second translator review the work of a primary translator from time to time to assess accuracy. As with written communications in English, the translator, as well as the staff member who composes the writing, must be conscious of the literacy level of the LEP client in his or her primary language so that written communications occur an appropriate level.

Programs should also investigate upgrading *word processing software* for use by staff. Keyboards, dictionaries and grammar checkers in other languages can simplify translation. *Translation software* (which automatically translates from one language to another) should only be used, if at all, for initial drafts of translations. Given that words have multiple possible meanings depending on context, translation software cannot be relied upon to produce accurate translations on its own; review is needed by a translator.

All of the policies and procedures created by the program should be written and distributed to all staff.

IV. TRAIN STAFF

Staff training is critical to implementation of a language access program for a number of reasons. It is likely that language policy will be new to staff, so that an initial round of training is needed to explain the policy and to emphasize its importance. Training provides the opportunity to discuss the rationale for the policy and to build staff support for its implementation. Existing staff may need to be pushed to change habitual ways of doing business that are no longer acceptable. Ongoing training should be planned for a period of time to assure uniform understanding and application of policy and to provide the opportunity for staff to discuss strengths and weaknesses in the policy.

One reason for formalizing language policies is to facilitate training. Staff need to read the policy as well as hear about it and discuss it. They also need to refer back to it later when issues arise. Consider creating a highly visible file folder that contains the policy, the staff language directory, instructions for obtaining in-house and outside language support, and a language identification card.

Interpreter training is also a necessity for existing bilingual staff who have any role to play as interpreters. And training in the *use of interpreters* is needed for all staff who may have occasion to work with interpreters.

V. MONITOR

Once policy is drafted, resources are in place and staff are trained, the program needs to devote resources to *monitor* itself to assure compliance with the policy and to continue efforts to improve services to LEP clients. One or more staff should be assigned responsibility for oversight. Monitoring can be done in different ways. Some examples:

- ▶ Now that you have your intake forms modified to code for preferred language, it will be possible to gather and chart information about the delivery of services to clients broken down by language. This can allow tracking of changes in service over time, comparison of different offices or units, and the like. Such information

can reveal which units are serving large numbers of LEP clients, which are reaching particular language groups, which are doing well with outreach, and so on. Conversely, the data may indicate where policy is not being followed, which offices or units need to undertake more effort to break down barriers, and where program resources should be directed.

- ▶ Consider creating a code in your time keeping system for staff time spent on interpreting or translating duties. Gathering such data may show where resources are needed.
- ▶ Monitor the use of contracted services to see which languages are being used, which offices or units are using services, and whether services are being used properly (e.g., you do not necessarily want people using telephone interpreters for hour long conversations, or relying on outside help when in-house staff is available).
- ▶ Observe whether translation services are being provided in tandem with interpreting services as would normally be expected.
- ▶ Solicit input from clients and client organizations to help assess whether language appropriate services are being delivered.
- ▶ set up your client grievance system so that clients can complain about language problems, and they will be reported to the staff responsible for monitoring language access.

Aside from keeping an eye on things, the monitoring process needs to address the larger question of whether specific LEP communities are, for whatever reason, not seeking help from the program. If there appears to be a significant disparity between the low income population, broken down by language, and the makeup of the clients that seek service, *targeted outreach* may be necessary to open the door to groups that are not being served and to repair historic inequities in service delivery. It is also important for programs to revisit questions raised during the initial assessment as to whether particular methods of delivering service, case selection, or the areas of practice which are given priority may tend to cause language based inequities in the delivery of services.

The monitoring function should include an annual review and revision of policy.

The designation of a person or group of persons to be responsible for language access is quite important. The work needed to assess language needs, establish policy, train staff and monitor requires a significant amount of staff time and resources over an extended period of time. With many staff overburdened, it is essential that time be carved out by management for the designated staff to get the job done.

VI. CONCLUSION

This article merely provides a starting point for legal services programs that want to undertake a serious effort to make themselves accessible to clients with limited English skills. It is intended to introduce legal services providers to a basic approach which we found useful, together with just enough explanation to provide a minimal understanding of some issues likely to arise. Some important issues are not covered or are mentioned in passing in the interest of brevity. For example, entire books have been written on the ways in which cultural differences can inhibit communication or working relationships. However, treatises are not necessary to acknowledge that this is an area where many programs need improvement, nor to provide initial guidance to those programs determined to deliver services in a more equitable manner.

Comments are welcomed and can be directed to our offices or e-mailed to: puyehara@clsphila.org.



Language Access Project
1424 Chestnut Street
Philadelphia, PA 19102
(215) 981-3700
www.clsphila.org

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